

## **REMARKS**

Applicants have received and reviewed an Office Action dated August 2, 2007. By way of response, Applicants have cancelled claim 21 without prejudice or disclaimer due to a restriction requirement. Applicants reserve the right to pursue the subject matter of this claim in a divisional application.

Applicants have amended claim 13. The amended claim finds support throughout the application. No new matter is presented.

For the reasons given below, Applicants submit that the amended claims are in condition for allowance and notification to that effect is earnestly solicited.

### **35 U.S.C. 103(a)**

Claims 13-15 were rejected under 35 U.S.C. 103(a) as unpatentable over Reiji et al., JP 01390809 (Reiji et al.). Applicants respectfully traverse the rejection.

To make a *prima facie* case of obviousness, the teachings of the prior art should have suggested the claimed subject matter to the person of ordinary skill in the art, and all the claim limitations must be taught or suggested in the references cited by the Examiner. *In re Kotzab*, 217 F.3d 1365, 1370 (Fed. Cir. 2000). As articulated by the Supreme Court in a recent case, a combination is obvious if it is no more than the predictable use of known elements according to their established functions; and there was a reason to combine the known elements. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. \_\_ (2007). To make a *prima facie* case of obviousness, "it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." *Id.* A dependent claim is not obvious if the claim from which it depends is not obvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). The initial burden to make a *prima facie* case of obviousness is on the Examiner. *In re Bell*, 991 F.2d 781, 783 (Fed. Cir. 1993). Applicants submit that the Examiner does not make a *prima facie* case of obviousness, because all the limitations of the present claims are not taught by the reference cited in the Office Action.

While not acquiescing to the rejection and solely to expedite prosecution, claim 13 is now directed to a method for treating skeletal muscle injuries, bone defects, or bone fractures in an animal, comprising administering to the animal suffering from skeletal muscle injuries, bone defects, or bone fractures an effective amount of an organic extract from *Geum Japonicum*

*thunb* var. comprising tannins comprising ginsenosides A, B, C, D, E and F and triterpenes comprising 2-hydroxyoleanolic acid, 2-hydroxyursolic acid, 2, 19-dihydroxy-ursolic acid, 2- $\alpha$ ,19- $\alpha$ -dihydroxy-3-oxo-12-ursen-28-oic acid, ursolic acid, epimolic acid, maslinic acid, euscaphic acid, tormentic acid, and 28- $\beta$ -D-glucoside of tormentic acid.

Reiji et al. discuss improvement of chapped skin and inflammation on external skin surfaces by applying one or more plant extracts from *Aucuba japonica*, *Firmiana simplex*, *Polygonatum odoratum*, *Pyrola japonica*, *Curcuma domestica*, *Aristolochia debilis*, *Anemone cernua*, *Xanthium strumarium*, *Patrinia scabiosifolia*, *Metaplexis japonica*, *Typha latifolia*, *Pinellia ternata*, *Paulownia tomentosa*, *Chelidonium majus*, *Forrestii* Rolfe, *Ajuga decumbens*, *Cassia nomame*, *Geum japonicum*, *Taraxacum*, *Ligularia tussilaginea*, *Solanum Melongena*, *Nandina domestica*, *Euonymus alata*, *Allium tuberosum*, *Allium fistulosum*, *Allium Grayi*, *Nelumbo nucifera*, *Tribulus terrestris*, *Lycoris radiata*, *Petasites japonicus*, *Poria Cocos*, *Impatiens balsamina*, *Leonurus sibiricus*, *Citrus junos*, *Aster yomena*, *Euphorbia ebracteolata*, *Kadsura japonica*, *Hypericum perforatum*, *Pyrrosia lingua*, *Symphytum officinale*, and *Paederia scandens*. The extracts are obtained by refluxing or dipping the plants in a mixture of organic solvents and water, and filtering and concentrating the resulting product.

Reiji et al. do not teach Applicants' claimed subject matter. Reiji et al. do not teach a method for treating skeletal injuries, bone defects, or bone fractures. As indicated above, Reiji et al. disclose a plant extract from one or more of many plants for preventing and improving chapped skin. In contrast, Applicant's claims are directed to treatment of skeletal injuries, bone defects, and bone fractures. There is no teaching or suggestion in Reiji et al. that any of the extracts can or should be used to treat bone or skeletal injuries. Applicants submit it would not be obvious in view of Reiji et al. to use the presently claimed organic extract for treating the conditions as claimed in claims 13–15.

Accordingly, based on the foregoing differences, Applicants respectfully submit that the cited references do not render the presently claimed invention obvious, and withdrawal of this rejection is respectfully requested.

#### **Interview Request**

Applicants request an interview with the Examiner and her supervisor upon receipt of these papers.

**SUMMARY**

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,  
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